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7 **IN THE UNITED STATES DISTRICT COURT**
 8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

9 JEFFREY SCHULKEN AND JENIFER)
 SCHULKEN, individuals, on their own)
 10 behalves and on behalf of all others similarly)
 situated,)

No. C-09-02708-JW

11)
 Plaintiff,)

PLAINTIFFS' SECOND AMENDED
CLASS ACTION COMPLAINT
AND JURY DEMAND

12)
 13 v.)

Judge: Hon. James Ware

14 WASHINGTON MUTUAL BANK,)
 HENDERSON, NEVADA; JPMORGAN)
 15 CHASE BANK, N.A.,)

16 Defendants.)

17 Jeffrey and Jenifer Schulken (the "Schulkens" or "Plaintiffs"), for their Second Amended
 18 Complaint, allege as follows upon information and belief, based upon, *inter alia*, investigation
 19 conducted by their attorneys, except as to those allegations pertaining to Plaintiffs and their
 20 counsel personally, which are alleged upon personal knowledge:

21 **Introduction**

22 1. This case is about Defendants' use of false pretenses to illegally suspend and
 23 reduce credit limits on home equity lines of credit ("HELOCs") across the country. JPMorgan
 24 Chase Bank, N.A. ("Chase"), and its recently acquired division, Washington Mutual Bank
 25 ("WAMU") (collectively "Defendants"), in an attempt to limit their exposure to the risk of
 26 collapse in the United States housing market, have violated Regulation Z and the Truth-in-
 27 Lending Act and have broken contractual promises to their HELOC account holders (collectively
 28

the “Class Members”) by claiming that their customers’ financial circumstances had materially changed (when they in fact had not) such that the customers would not be able to meet their loan obligations (when they in fact would). Rather than verifying first whether a customer’s financial circumstances had materially changed for the worse, Defendants reduced credit limits and froze accounts at the outset, leaving the customer with the option of appealing but without access to the credit for which he or she had bargained. As a result of the Defendants’ “shoot first, ask questions later approach,” the Defendants have collectively denied their customers access to hundreds of millions of dollars of credit at a critical time.

2. Each member of the Class had a HELOC for which Chase or WAMU reduced the available credit in a manner that was both illegal and unfair. As a result of Defendants’ wrongful actions, Plaintiffs bring this class action on behalf of themselves and the putative class for actual and statutory damages and attorneys’ fees under Regulation Z of the Truth-in-Lending Act (“TILA”) (15 U.S.C. § 1640(a); 12 C.F.R. § 226.5(b)), equitable and injunctive remedies under California’s Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code § 17200 *et. seq.*) and damages for breach of contract.

Nature of the Claim

3. As recently as March 2009, Defendants sent a form letter to thousands of their HELOC customers, including Plaintiffs and the other class members, demanding verification of income. The letter stated:

We need your help updating your financial information related to your Home Equity Line of Credit (HELOC). Your account documents allow us to request updated information from you.

Complying with our request is easy:

- Complete and sign the enclosed Internal Revenue Service (IRS) Form 4506-T where indicated for each Borrower shown above. Instructions for completing the form are on the following page. This form allows us to obtain a summary of a specified federal tax return from the IRS.
- Provide a copy of a recent paystub for each Borrower and any additional current income documentation you would like to provide. Please indicate if you are self employed.
- Return each completed and signed 4506-T and other documents within 14 days of the date of this letter. You can fax the documents to 1-866-272-

9223 or mail them to: Washington Mutual Bank, a division of JPMorgan Chase Bank, N.A., Account Management MBO402FL, P.O. Box 3990, Melbourne, FL 32902-3990.

It is important that you provide this information. Thank you for your cooperation....

(See “March 13, 2009 Income Verification Request,” a true and accurate copy of which is attached as Exhibit A.)

4. Plaintiffs submitted the necessary information shortly thereafter. On March 19, 2009, just six days after the date of the Defendants’ initial letter, Plaintiffs learned that Defendants had frozen their HELOC while checking their account online. Plaintiffs then received a letter in an envelope post-marked March 19, 2009. Inside was a letter dated March 18, 2009, notifying Plaintiffs that their line was being suspended for their failure to submit all the paperwork specified in the letter of March 13, 2009. (See “Suspension Letter of March 18, 2009,” a true and accurate copy of which is attached as Exhibit B.) During repeated telephone calls to Defendants’ customer service personnel, Chase and WAMU subsequently explained that they had not received the necessary documentation, despite the fact their Income Verification Request had requested the documents be provided within 14 days. Ultimately, Plaintiffs received a form notice advising them that their HELOC account would remain suspended due to their financial circumstances and purported inability to support the loan amount.

5. Chase and WAMU lacked a sound factual basis for sending these letters and reducing or freezing their customers’ HELOC limits. Defendants knowingly and intentionally falsely claimed that their customers’ financial circumstances had changed so as to “trigger” Chase and WAMU’s right to freeze or lower the credit limits. As a result, Defendants, in violation of federal law, reduced the credit limits and/or froze the HELOC accounts of many homeowners, including Plaintiffs, whose financial circumstances had not materially worsened so as give Defendants a reasonable basis for concluding the Plaintiffs and other accountholders would be unable to meet the terms of their loans.

6. Although federal law allows the creditor to freeze or reduce the line where the creditor reasonably believes that the consumer will be unable to make payments as agreed because

1 of a material change in the consumer's financial circumstances, this exception requires both a
2 material change in a borrower's financial situation and the creditor's reasonable belief that the
3 borrower will not be able to repay the HELOC account as agreed. With respect to Plaintiff and the
4 Class, Defendants froze accounts and reduced credit limits where no material changes in the
5 borrowers' financial situations had occurred and the Defendants did not have a reasonable belief
6 that the borrowers would be unable to repay their HELOC accounts as agreed. As a result,
7 Defendants' intentional systematic, freezing and mass reduction on the limits on their customers'
8 HELOCs, as well as their use of standards that are inconsistent with Regulation Z, was and
9 remains illegal.

10 7. Defendants' HELOC reductions are not only illegal; they are patently
11 unconscionable. On October 3, 2008, Congress passed the Emergency Economic Stabilization
12 Act of 2008, Pub. L. No. 110-343. As part of this law, Chase obtained, on information and belief,
13 approximately \$25 billion from an unprecedented \$700 billion bailout funded entirely by
14 American taxpayers. The rationale advanced for the bailout by its proponents was that the banks
15 needed the money to ensure liquidity in the face of the worsening subprime mortgage disaster.

16 8. Despite Chase's statements to Congress to the contrary, Defendants have
17 intentionally failed to meet their obligations to their customers and have intentionally deprived
18 those customers of crucial affordable consumer credit at a critical time.

19 9. In stark contrast, Defendants' HELOC borrowers such as Plaintiffs, like most
20 American consumers, are struggling in a faltering economy, yet they continue to meet their
21 mortgage obligations. These customers have incurred appraisal fees, an increased price of credit
22 and reduced credit scores, lost interest and other damages.

23 **Parties**

24 10. **Plaintiffs Jeffrey and Jenifer Schulken:** Plaintiffs maintain their primary
25 residence in Cupertino, CA (the "subject matter property"). In or around October 2005, Plaintiffs
26 obtained a HELOC in the amount of \$250,000 secured by the subject matter property.

27 11. **Defendant Washington Mutual Bank, Henderson, Nevada:** WAMU is a
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1 15. Venue is also proper before this Court under 28 U.S.C. § 1391(b)(2) as a
2 substantial part of the events, circumstances, and omissions giving rise to these claims occurred in
3 this District.

4 16. This Court has personal jurisdiction over Defendants under Cal. Code Civ. Proc. §
5 410.10 because some of the acts alleged herein were committed in California (specifically in Santa
6 Clara County, California), and because Defendants are registered to do business in this state and
7 actively conduct business in this District.

8 **Allegations as to Plaintiffs' Individual Claims**

9 17. In October 2005, Plaintiffs obtained a HELOC secured by the subject matter
10 property in the amount of \$250,000. According to Chase's own website, HELOC customers can
11 utilize HELOC funds for a variety of needs, including, for example, home improvements,
12 consolidating credit card debt, and paying college tuition. *See* CHASE, HOME EQUITY LINE OF
13 CREDIT, [https://www.chase.com/index.jsp?pg_name=ccpmapp/home_equity/products/page/](https://www.chase.com/index.jsp?pg_name=ccpmapp/home_equity/products/page/line_of_credit)
14 [line_of_credit](https://www.chase.com/index.jsp?pg_name=ccpmapp/home_equity/products/page/line_of_credit) (last visited Mar. 16, 2010). Plaintiffs' HELOC was for personal, family and
15 household purposes. Plaintiffs obtained the HELOC for the primary purpose of paying down
16 personal debt obligations relating to personal, family and household purchases. Among other
17 personal and household uses, Plaintiffs used the HELOC funds to pay down personal debt incurred
18 on the purchase of a motorcycle for personal use, the purchase of a van for family use, the
19 renovation of their master bedroom in their home, the purchase and installation of carpet and
20 flooring throughout their house, and the purchase of home appliances, including a washer and
21 dryer.

22 18. On March 13, 2009 Plaintiffs received an Income Verification Request letter from
23 Defendants seeking certain financial information within 14 days. (See Ex. A.)

24 19. Plaintiffs complied with the Income Verification Request and submitted financial
25 information over the next several days via facsimile.

26 20. On March 19, 2009, Plaintiffs discovered, while checking their account via the
27 Defendants' website, that their HELOC had been suspended. The next day, Plaintiffs received a
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1 letter apparently mailed March 19, 2009 and dated March 18, 2009 that notified the Plaintiffs that
2 their line was being suspended for their failure to submit all the paperwork specified in the letter
3 of March 13, 2009. (See Ex B.)

4 21. Prior to the HELOC suspension but before notice, Plaintiffs had issued a check to
5 pay their credit card. This check was dishonored and the Plaintiffs incurred finance charges as a
6 result.

7 22. Following the suspension, Plaintiffs repeatedly contacted customer service and
8 were provided confusing and often conflicting reasons for how Defendants had determined the
9 Plaintiffs' income justified the suspension. Plaintiffs were also given inconsistent information
10 with respect to the papers needed by the Defendants to review the account for potential
11 reinstatement. Plaintiffs ultimately sent via facsimile over 75 pages worth of financial
12 documentation to Defendants, including the requested documents other than paystubs because the
13 Schulzens are self-employed. Defendants steadfastly refused to remove the suspension.

14 23. At no time did Plaintiffs' income materially change or decrease, and at no time did
15 the Defendants' have a reasonable basis for concluding Plaintiffs, who had always made timely
16 payments on all their loans, would not be able to meet the terms of their loan agreement. Despite
17 repeated requests, Defendants have refused to remove the suspension.

18 24. Plaintiffs' HELOC with Defendants was their primary line of credit. Defendants'
19 reduction of the credit limits on the Schulzens' HELOC dramatically increased the ratio of credit
20 the Schulzens used to the amount of credit he had available. In turn, on information and belief,
21 Defendants' acts drove up the Schulzens' Credit Utilization Rate ("CUR"), a major component of
22 their credit rating. In addition to depriving the Schulzens of the availability of their HELOC,
23 Defendants' acts damaged their credit rating and increased the cost of credit to them.

24 **Class Certification Allegations**

25 25. Plaintiffs seek certification of a class and one subclass under both Fed. R. Civ. P.
26 23(b)(2) and Rule 23(b)(3).

27 26. **Definition of the Class:** Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this
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1 Complaint against Defendants on behalf of the “Class,” consisting of:

2 All WAMU and Chase HELOC borrowers in the United States who had their
3 respective HELOCs reduced or suspended due to WAMU’s or Chase’s conclusion
4 that the borrower would be unable to fulfill their payment obligations due to a
5 purported material adverse change in financial circumstances.

6 Excluded from the Class are 1) any Judge or Magistrate presiding over this action and members of
7 their families; 2) Defendants, Defendants’ subsidiaries, parent companies, successors,
8 predecessors, and any entity in which Defendants or their parent companies have a controlling
9 interest and their current or former employees, officers and directors; 3) persons who properly
10 execute and file a timely request for exclusion from the class; and 4) the legal representatives,
11 successors or assigns of any such excluded persons.

12 Plaintiffs anticipate that amending the Class definition may become necessary following
13 discovery.

14 27. **Numerosity:** The exact number of the members of the Class is unknown and is not
15 available to the Schulken, but it is clear that individual joinder is impracticable. Defendants sent
16 their generic letters to thousands of mortgagors, and a substantial percentage of the recipients of
17 these letters fall into the definition of the Class. Class members can be easily identified through
18 Defendants’ records and public records.

19 28. **Commonality:** Common questions of fact and law exist as to all members of the
20 Class and predominate over the questions affecting only individual members. These common
21 questions include:

- 22 (a) What were Defendants’ criteria for reducing or suspending the credit limits on their
23 HELOCs;
- 24 (b) Whether Defendants reduced or suspended HELOC accounts based
25 on purported material changes in income without a reasonable basis for concluding
26 such a material change had in fact occurred;
- 27 (c) Whether Defendants’ criteria for reducing HELOC credit limits and/or suspending
28 HELOC accounts based on phantom material changes in accountholder finances
violated Regulation Z;

- 1 (d) Whether Defendants' reduction of the credit limits or account suspensions for
2 purported material changes in income breached the terms of its HELOC
3 agreements;
- 4 (e) Whether Defendants' HELOC agreement terms imposed contractual obligations on
5 Defendants to comply with Regulation Z;
- 6 (f) Whether Defendants' reduction or suspension of the credit limits on their HELOC
7 agreements was unfair and unlawful;
- 8 (g) Whether in those cases where a material change in financial circumstances had in
9 fact occurred, Defendants had a reasonable basis for concluding the material
10 changes would render such customers unable to meet the terms of their HELOC
11 agreements.
- 12 (h) Whether Defendants' contracts and policies improperly purport to allow them to
13 reduce credit limits or freeze HELOC accounts due to immaterial declines in
14 property values or otherwise use triggering events inconsistent with federal law;
- 15 (i) Whether the Schulzens and the Class members are entitled to relief, and the nature
16 of such relief.

17 29. **Typicality:** The Schulzens' claims are typical of the claims of other members of
18 the Class as the Schulzens and other members sustained damages arising out of the wrongful
19 conduct of Defendants, based upon the same transactions which were made uniformly to the
20 Schulzens and the public. The California and federal laws under which the Schulzens' claims
21 arise do not conflict with the laws of any other state in any material way.

22 30. **Adequate Representation:** Plaintiffs will fairly and adequately represent and
23 protect the interests of the members of the Class, and have retained counsel competent and
24 experienced in complex class actions. Plaintiffs have no interest antagonistic to those of the Class
25 or the Subclasses and Defendants have no defenses unique to Plaintiffs.

26 31. **Predominance and Superiority:** This class action is appropriate for certification
27 because class proceedings are superior to all other available methods for the fair and efficient
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1 adjudication of this controversy, since joinder of all members is impracticable. The damages
 2 suffered by the individual members of the Class will likely be relatively small, especially given
 3 the burden and expense of individual prosecution of the complex litigation necessitated by the
 4 actions of Defendants. It would be virtually impossible for the individual members of the Class to
 5 obtain effective relief from the misconduct of Defendants. Even if members of the Class
 6 themselves could sustain such individual litigation, it would still not be preferable to a class
 7 action, because individual litigation would increase the delay and expense to all parties due to the
 8 complex legal and factual controversies presented in this Complaint. By contrast, a class action
 9 presents far fewer management difficulties and provides the benefits of single adjudication,
 10 economy of scale, and comprehensive supervision by a single Court. Economies of time, effort,
 11 and expense will be fostered and uniformity of decisions will be ensured.

12 32. **Policies Generally Applicable to the Class:** This class action is also appropriate
 13 for certification because Defendants have acted or refused to act on grounds generally applicable
 14 to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief
 15 with respect to Class as a whole. The policies of Defendants challenged herein apply and affect
 16 members of both Class uniformly, and Plaintiffs' challenge of these policies hinges on Defendants'
 17 conduct, not on facts or law applicable only to Plaintiffs.

18 **Count I: Declaratory Relief Under TILA and Regulation Z**

19 33. Plaintiffs incorporate the above allegations by reference.

20 34. The Truth-in-Lending Act ("TILA") and its implementing regulation (Regulation
 21 Z) prohibit Defendants from changing any of the terms of a mortgage or HELOC, including the
 22 credit limit. 15 U.S.C. § 1647(c)(1); 12 C.F.R. § 226.5b(f)(3).

23 35. There is an exception under TILA and Regulation Z for any period in which the
 24 creditor reasonably believes that the consumer will be unable to make payments as agreed because
 25 of a material change in the consumer's financial circumstances. This exception requires both a
 26 material change in a borrower's financial situation and the creditor's reasonable belief that the
 27 borrower will not be able to repay the HELOC account as agreed. 15 U.S.C. § 1647; 12 C.F.R. §
 28

1 226.5(b)(3)(vi), comment 7. Regulation Z permits an association to suspend or reduce a HELOC
2 account only when the designated circumstances exist, and the regulatory commentary emphasizes
3 that credit privileges must be timely reinstated when those circumstances cease.

4 36. Before reducing the limits of their customers' HELOCs, Defendants had the
5 obligation to both ensure that the customers' financial circumstances had in fact materially
6 changed and that if those circumstances had materially changed, that they would reasonably render
7 the customer unable to meet the terms of the agreement. The Defendants' practice of asking for
8 financial documentation within a certain number of days, and then suspending the line prior to the
9 expiration of those deadlines, and then claiming they have not been provided the necessary
10 information, violates these duties. Additionally, Defendants reduced the credit limits and/or froze
11 the HELOC accounts of the Class members, including Plaintiffs, whose financial circumstances
12 had not materially worsened and/or where Defendants lacked a reasonable basis for concluding
13 that the accountholders would be unable to meet the terms of their loans.

14 37. Plaintiffs and the Class members have been harmed by being denied credit at a
15 necessary time and incurred damages, such as returned/dishonored check fees and finance charges,
16 due to the Defendants' unfair notice scheme.

17 38. Plaintiffs and the other members of the Class have additionally been harmed
18 because Defendants have knowingly failed to disclose information that would permit Plaintiff and
19 the Class members to fairly determine whether to seek reinstatement, including but not limited to:

- 20 a. how Defendants determine or define a material change in income or financial
21 circumstances,
- 22 b. how Defendants compute an accountholder's ability to meet the terms of his or her
23 loan agreement,
- 24 c. Defendants' actual and specific reasons for the reduction or suspension of the
25 HELOCs,
- 26 d. the process, procedures, and guidelines pursuant to which Defendants implemented
27 their reduction /suspension of the HELOCs,
28

1 e. other necessary and material information.

2 39. The Class and Defendants have adverse legal interests, and there is a substantial
3 controversy between the Class and Defendants of sufficient immediacy and reality to warrant the
4 issuance of a declaratory judgment as to whether Defendants' mass reduction of credit limits
5 violates TILA and Regulation Z.

6 40. The Schulzens, on their own behalf and behalf of the other Class members, seek a
7 declaratory judgment under 27 U.S.C. § 2201 that Defendants' mass reduction or suspension of
8 HELOC credit limits in connection with their letters violates TILA and Regulation Z.

9 **Count II: Violation of TILA and Regulation Z**

10 41. Plaintiffs incorporate the above allegations by reference.

11 42. Defendants knowingly lacked a sufficient factual basis for reducing Plaintiffs' and
12 the Class's credit limits or prohibiting additional extensions of credit. Defendants lacked a sound
13 factual basis for concluding the financial circumstances had materially changed for the Schulzens
14 and other Class members sufficiently to support reducing the credit limits or prohibiting additional
15 extensions of credit. Defendants also used improper triggering events for determining when such
16 a "material change" had occurred.

17 43. Defendants' suspension of the HELOC for the Schulzens and other Class members'
18 HELOCs violated the Truth-in-Lending Act and Regulation Z.

19 44. Defendants' violations of the Truth-in-Lending Act and Regulation Z damaged the
20 Schulzens and the other Class members. These damages occurred in the form of the increased
21 price of credit, loss of the bargained-for use of the credit line, adverse effects on credit scores,
22 dishonored check and finance charges, and other damages.

23 45. The Schulzens, on their own behalf and behalf of the other Class members, seek
24 actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)
25 (B), and costs of the action, together with a reasonable attorney's fees under 15 U.S.C. §
26 1640(a)(3).

Count III: Violation of TILA and Regulation Z

1 46. Plaintiffs incorporate the above allegations by reference.

2 47. Where a creditor prohibits additional extensions of credit or reduces the credit
3 limit, “the creditor shall mail or deliver written notice of the action to each consumer who will be
4 affected. The notice must be provided not later than three business days after the action is taken
5 and shall contain specific reasons for the action.” Regulation Z, 12 C.F.R. § 226.9(c)(3).

6 48. Defendants provided Plaintiffs and, on information and belief, the members of the
7 Class with notices of their HELOC reductions and suspensions that lacked sufficient and
8 necessary information, including the specific reasons for Defendants’ actions.

9 49. Defendants’ initial demand for financial information required that borrowers
10 provide certain financial information within 14 days but failed to apprise borrowers of the
11 consequences of failing to timely respond or that responding timely but with “incomplete”
12 information would result in the immediate suspension of their accounts.

13 50. Defendants’ notices failed to adequately identify the specific reasons for their
14 actions. The HELOC suspension notices sent by Defendants to Plaintiffs and the Class are further
15 deficient because they do not indicate what change in financial circumstances Defendants consider
16 “material” and do not include what adverse information Defendants obtained from credit agencies
17 that purportedly justified account suspension or reduction. Without this information, Plaintiffs
18 and other Class members were deprived of critical information needed to determine whether to
19 challenge Defendants’ actions and seek account reinstatement.

20 51. Defendants’ violations of the Truth-in-Lending Act and Regulation Z damaged the
21 Schulken and the other Class members. These damages occurred in the form of the increased
22 price of credit, adverse effects on credit scores, loss of the bargained-for use of the credit line,
23 dishonored check and finance charges, and other damages.

24 52. The Schulken, on their own behalf and behalf of the other Class members, seek
25 actual damages under 15 U.S.C. § 1640(a)(1), statutory damages under 15 U.S.C. § 1640(a)(2)
26 (B), and costs of the action, together with a reasonable attorney’s fee under 15 U.S.C. §
27 1640(a)(3).
28

Count IV: Breach of Contract

53. Plaintiffs incorporate the above allegations by reference.

54. The Schulkens and the other Class members obtained HELOCs from Defendants. The terms of these HELOCs constitute a contract between the Class members and Defendants.

55. The HELOC agreements contain a term that tracks Regulation Z and provides that Defendants may reduce or suspend additional extensions of credit during times when the Defendants “(b) ...reasonably believe that you will be unable to fulfill your payment obligations under this Agreement due to a material adverse change in your financial circumstances.”

56. The Schulkens and the other Class members made all payments due to Defendants and otherwise fully performed under their HELOCs with Defendants.

57. The availability of credit and the triggering events the lender could use to suspend credit extensions were material terms.

58. Defendants materially breached the terms of the HELOCs by suspending the HELOC accounts for the Schulkens and other Class members’ HELOCs where no material adverse change in financial circumstances had first occurred that would give Defendants a reasonable basis for believing the borrowers would be unable to fulfill their payment obligations under their agreements.

59. As a result, the Schulkens and the other Class members have suffered damages in the form of the increased price of credit, lost interest, attorneys' fees, adverse effects on credit scores, finance charges and dishonored check fees, the loss of the bargained-for use of the credit limit, and other damages.

60. The Schulkens, on their own behalf and behalf of the other Class members, seek damages for Defendants’ breach of contract, as well as interest and attorney’s fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

Count V: Violation of California’s UCL, Cal. Bus. & Prof. Code § 17200

61. Plaintiffs incorporate the above allegations by reference.

62. Defendants’ reduction or suspension of the credit limit for the Schulkens and other

1 Class members' HELOCs violated TILA and Regulation Z. With respect to the Class,
2 Defendants' practice of requesting financial information by a deadline, and then proceeding to
3 suspend accounts based on purported failures to submit the requested information well before the
4 deadline was unlawful, unfair, and deceptive. These unlawful, deceptive, and unfair acts and
5 practices constitute unfair competition in violation of the UCL.

6 63. Defendants have engaged in unlawful, unfair, and fraudulent business acts and
7 practices as set forth above.

8 64. Defendants have violated the "unlawful" prong of the UCL in that Defendants'
9 conduct was undertaken in violation of TILA and Regulation Z, as alleged above.

10 65. Defendants have also violated the "unfair" prong of the UCL by suspending or
11 reducing the HELOC accounts without providing any advance notice (in its notice letters or in its
12 HELOC agreements) that failure to timely provide the requested financial information could
13 constitute grounds for account suspension. Defendants further acted unfairly and deceptively by
14 requiring that certain financial information be submitted within 14 days but then suspending
15 Plaintiffs' HELOC in only 5 days. Mandating an arbitrary deadline without identifying the
16 potential ramifications for noncompliance, and then suspending accounts prior to the expiration of
17 that deadline, is an unfair, deceptive and unscrupulous action.

18 66. Additionally, Defendants' actions caused substantial injury to Plaintiffs and the
19 Class members. The injury caused by Defendants' conduct is not outweighed by any
20 countervailing benefits to consumers or competition; Defendants' actions benefitted only
21 Defendants while causing nothing but injury to the Class members by wrongfully depriving them
22 of access to affordable credit at a critical time. The injury caused by Defendants' conduct could
23 not reasonably have been avoided by the Class members themselves, as Defendants exercised their
24 discretion unilaterally to suspend or reduce the HELOC accounts.

25 67. Defendants have also violated the "fraudulent" prong of the UCL in that
26 Defendants' statements or material omissions to their HELOC customers whose lines Chase
27 and/or WaMu suspended or reduced, made both in writing through their HELOC notices and
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1 letters and orally over the telephone through their customer service representatives when
 2 aggrieved customers contacted Defendants to discuss the suspensions or reductions, were false and
 3 were likely to deceive a reasonable consumer, including Defendants' statements:

- 4 a. regarding the availability of credit through the HELOCs;
- 5 b. indicating that any potential future reduction of credit through the HELOCs would
 6 only occur through a material adverse change in financial condition;
- 7 c. concerning the amount of time that a customer has to respond to Chase's request
 8 for financial information, including the potential consequences of not fully
 9 complying with its information request within the stated 14-day period –
 10 particularly in light of Chase' illustrated willingness to suspend accounts in less
 11 than half that time; and
- 12 d. regarding Defendants' purported authority under the customers' HELOC
 13 agreements to demand the customer submit IRS Form 4506T.

14 68. Defendants' violations of the UCL damaged Plaintiffs and the Class by causing the
 15 Schulken and the other Class members to pay money to Defendants in the form of fees, lost
 16 interest, lost opportunity, adversely impacted credit, loss of the bargained-for use of the credit
 17 limit, and other damages.

18 69. Plaintiffs and the Class members have also suffered adverse effects to their credit
 19 scores, finance charges from dishonored checks, attorneys' fees and other damages.

20 70. The Schulken, on their own behalf and behalf of the other Class members, seek an
 21 order preliminarily and permanently enjoining Defendants' unfair competition alleged herein and
 22 requiring Defendants to restore HELOC credit limits and cease suspending or reducing HELOCs
 23 in violation of Regulation Z, and individual restitution of property gained at the expense of the
 24 Class members by such unfair competition under the UCL (Cal. Bus. & Prof. Code § 17203), as
 25 well as interest and attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

26 WHEREFORE, Plaintiffs pray that the Court enter judgment and Orders in their favor and
 27 against Defendants as follows:
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- (a) Certifying the action as a class action and designating Plaintiffs and their counsel as representatives of the Class;
- (b) Entering declaratory judgment under 27 U.S.C. § 2201 on Count I that the Defendants' HELOC reductions violate federal law;
- (c) Awarding statutory damages under 15 U.S.C. § 1640(a)(2)(B) for Counts II and III;
- (d) Awarding actual damages on Counts II, III, IV, and V for the Class including but not limited to appraisal fees, loss of the bargained-for use of the credit limit, the increased price of credit, dishonored check and finance charges, attorneys' fees, interest and other damages in an amount to be proved at trial;
- (e) Awarding preliminary and permanent equitable and injunctive relief for the Class, including enjoining the Defendants from further violations of Regulation Z, restoration of HELOC credit limits, restitution of property gained by the unfair competition alleged herein, and an order for accounting of such property;
- (f) Awarding Plaintiffs and the Class reasonable costs and attorneys' fees;
- (g) Awarding pre- and post-judgment interest;
- (h) Awarding punitive damages; and
- (i) Granting such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

The Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: March 19, 2010

JEFFREY AND JENIFER SCHULKEN,
individually and on behalf of
a class of similarly situated individuals

By: /s/ Sean P. Reis
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PROOF OF SERVICE

I hereby certify that on March 19, 2010, I electronically filed the foregoing *Plaintiff's Second Amended Class Action Complaint and Jury Demand* with the Clerk of the Court using the CM/ECF system. Notice of this filing is sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

George G. Weickhardt
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